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S. 1688

[Report No. 93-]

IN THE HOUSE OF REPRESENTATIVES

MARCH 11, 1974

Referred to the Committee on Post Office and Civil Service

SEPTEMBER , 1974

Reported with amendments, committed to the Committee of the Whole House
on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

AN ACT

To protect the civilian employees of the executive branch of the
United States Government in the enjoyment of their con-
stitutional rights and to prevent unwarranted governmental
invasions of their privacy.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 **SECTION 1.** *It shall be unlawful for any officer of any*
- 4 *executive department or any executive agency of the United*
- 5 *States Government, or for any person acting or purporting*
- 6 *to act under his authority, to do any of the following things:*

J. 39-775-0-1

1 (a) ~~To require or request, or to attempt to require or~~
2 ~~request, any civilian employee of the United States serving~~
3 ~~in the department or agency, or any person seeking employ-~~
4 ~~ment in the executive branch of the United States Govern-~~
5 ~~ment, to disclose his race, religion, or national origin, or~~
6 ~~the race, religion, or national origin of any of his fore-~~
7 ~~bears: Provided, however, That nothing contained in this~~
8 ~~subsection shall be construed to prohibit inquiry concerning~~
9 ~~the citizenship of any such employee or person if his citizen-~~
10 ~~ship is a statutory condition of his obtaining or retaining his~~
11 ~~employment: Provided further, That nothing contained in~~
12 ~~this subsection shall be construed to prohibit inquiry concern-~~
13 ~~ing the national origin or citizenship of any such employee or~~
14 ~~person or of his forebears, when such inquiry is deemed~~
15 ~~necessary or advisable to determine suitability for assignment~~
16 ~~to activities or undertakings related to the national security~~
17 ~~within the United States or to activities or undertakings of~~
18 ~~any nature outside the United States.~~

19 (b) ~~To state or intimate, or to attempt to state or inti-~~
20 ~~mate, to any civilian employee of the United States serving~~
21 ~~in the department or agency that any notice will be taken of~~
22 ~~his attendance or lack of attendance at any assemblage, dis-~~
23 ~~cussion, or lecture held or called by any officer of the execu-~~
24 ~~tive branch of the United States Government, or by any per-~~
25 ~~son acting or purporting to act under his authority, or by any~~

1 outside parties or organizations to advise, instruct, or in-
2 doctrinate any civilian employee of the United States serving
3 in the department or agency in respect to any matter or
4 subject other than the performance of official duties to which
5 he is or may be assigned in the department or agency, or
6 the development of skills, knowledge, or abilities which
7 qualify him for the performance of such duties: *Provided*,
8 however, That nothing contained in this subsection shall be
9 construed to prohibit taking notice of the participation of a
10 civilian employee in the activities of any professional group
11 or association.

12 (c) To require or request, or to attempt to require or
13 request, any civilian employee of the United States serving
14 in the department or agency to participate in any way in
15 any activities or undertakings unless such activities or under-
16 takings are related to the performance of official duties to
17 which he is or may be assigned in the department or agency,
18 or to the development of skills, knowledge, or abilities which
19 qualify him for the performance of such duties.

20 (d) To require or request, or to attempt to require
21 or request, any civilian employee of the United States serv-
22 ing in the department or agency to make any report con-
23 cerning any of his activities or undertakings unless such
24 activities or undertakings are ^{directly} related to the performance of
25 official duties to which he is or may be assigned in the

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1 department or agency, or to the development of skills, knowl-
2 edge, or abilities which qualify him for the performance of
3 such duties, or unless there is reason to believe that the
4 civilian employee is engaged in outside activities or employ-
5 ment in conflict with his official duties.

6 (e) To require or request, or to attempt to require or
7 request, any civilian employee of the United States serving
8 in the department or agency, or any person applying for
9 employment as a civilian employee in the executive branch
10 of the United States Government, to submit to any interroga-
11 tion or examination or to take any psychological test which
12 is designed to elicit from him information concerning his
13 personal relationship with any person connected with him
14 by blood or marriage, or concerning his religious beliefs or
15 practices, or concerning his attitude or conduct with respect
16 to sexual matters: *Provided, however, That nothing con-*
17 *tained in this subsection shall be construed to prevent*
18 *a physician from eliciting such information or authorizing*
19 *such tests in the diagnosis or treatment of any civilian*
20 *employee or applicant where such physician deems such*
21 *information necessary to enable him to determine whether*
22 *or not such individual is suffering from mental illness: Pro-*
23 *vided further, however, That this determination shall be*
24 *made in individual cases and not pursuant to general practice*
25 *or regulation governing the examination of employees or*

1 applicants according to grade, agency, or duties: *Provided*
2 *further, however, That nothing contained in this subsection*
3 *shall be construed to prohibit an officer of the department or*
4 *agency from advising any civilian employee or applicant of a*
5 *specific charge of sexual misconduct made against that per-*
6 *son, and affording him an opportunity to refute the charge.*

7 (f) *To require or request, or attempt to require or*
8 *request, any civilian employee of the United States serving*
9 *in the department or agency, or any person applying for*
10 *employment as a civilian employee in the executive branch*
11 *of the United States Government, to take any polygraph*
12 *test designed to elicit from him information concerning his*
13 *personal relationship with any person connected with him*
14 *by blood or marriage, or concerning his religious beliefs or*
15 *practices, or concerning his attitude or conduct with respect*
16 *to sexual matters.*

17 (g) *To require or request, or to attempt to require*
18 *or request, any civilian employee of the United States serving*
19 *in the department or agency to support by personal endeavor*
20 *or contribution of money or any other thing of value the*
21 *nomination or the election of any person or group of persons*
22 *to public office in the Government of the United States or of*
23 *any State, district, Commonwealth, territory, or possession*
24 *of the United States, or to attend any meeting held to pro-*
25 *mote or support the activities or undertakings of any political*

1 ~~party of the United States or of any State, district, Common-~~
2 ~~wealth, territory, or possession of the United States.~~

3 ~~(h) To coerce or attempt to coerce any civilian~~
4 ~~employee of the United States serving in the department or~~
5 ~~agency to invest his earnings in bonds or other obligations~~
6 ~~or securities issued by the United States or any of its depart-~~
7 ~~ments or agencies, or to make donations to any institution~~
8 ~~or cause of any kind: Provided, however, That nothing con-~~
9 ~~tained in this subsection shall be construed to prohibit any~~
10 ~~officer of any executive department or any executive agency~~
11 ~~of the United States Government, or any person acting or~~
12 ~~purporting to act under his authority, from calling meetings~~
13 ~~and taking any action appropriate to afford any civilian em-~~
14 ~~ployee of the United States the opportunity voluntarily to~~
15 ~~invest his earnings in bonds or other obligations or securities~~
16 ~~issued by the United States or any of its departments or~~
17 ~~agencies, or voluntarily to make donations to any institution~~
18 ~~or cause.~~

19 ~~(i) To require or request, or to attempt to require~~
20 ~~or request, any civilian employee of the United States~~
21 ~~serving in the department or agency to disclose any items~~
22 ~~of his property, income, or other assets, source of income,~~
23 ~~or liabilities, or his personal or domestic expenditures or~~
24 ~~those of any member of his family or household: Provided,~~
25 ~~however, That this subsection shall not apply to any civilian~~

1 employee who has authority to make any final determination
2 with respect to the tax or other liability of any person, cor-
3 poration, or other legal entity to the United States, or
4 claims which require expenditure of moneys of the United
5 States: *Provided further, however, That nothing contained*
6 in this subsection shall prohibit the Department of the
7 Treasury or any other executive department or agency of
8 the United States Government from requiring any civilian
9 employee of the United States to make such reports as may
10 be necessary or appropriate for the determination of his
11 liability for taxes, tariffs, custom duties, or other obliga-
12 tions imposed by law.

13 (j) To require or request, or to attempt to require
14 or request, any civilian employee of the United States
15 embraced within the terms of the proviso in subsection
16 (i) to disclose any items of his property, income, or
17 other assets, source of income, or liabilities, or his personal
18 or domestic expenditures or those of any member of his
19 family or household other than specific items tending to
20 indicate a conflict of interest in respect to the perform-
21 ance of any of the official duties to which he is or may be
22 assigned.

23 (k) To require or request, or to attempt to require or
24 request, any civilian employee of the United States serving
25 in the department or agency, who is under investigation for

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1 misconduct, to submit to interrogation which could lead to
2 disciplinary action without the presence of counsel or other
3 person of his choice, if he so requests: *Provided, however,*
4 That a civilian employee of the United States serving in the
5 Central Intelligence Agency or the National Security Agency
6 may be accompanied only by a person of his choice who
7 serves in the agency in which the employee serves, or by
8 counsel who has been approved by the agency for access to
9 the information involved.

10 (1) To discharge, discipline, demote, deny promotion
11 to, relocate, reassign, or otherwise discriminate in regard to
12 any term or condition of employment of, any civilian em-
13 ployee of the United States serving in the department or
14 agency, or to threaten to commit any of such acts, by reason
15 of the refusal or failure of such employee to submit to or
16 comply with any requirement, request, or action made un-
17 lawful by this Act, or by reason of the exercise by such
18 civilian employee of any right granted or secured by this
19 Act.

20 SEC. 2. It shall be unlawful for any officer of the United
21 States Civil Service Commission, or for any person acting
22 or purporting to act under his authority, to do any of the
23 following things:

24 (a) To require or request, or to attempt to require or
25 request, any executive department or any executive agency

1 ~~of the United States Government, or any officer or employee~~
2 ~~serving in such department or agency, to violate any of the~~
3 ~~provisions of section 1 of this Act.~~

4 ~~(b) To require or request, or to attempt to require or~~
5 ~~request, any person seeking to establish civil service status~~
6 ~~or eligibility for employment in the executive branch of the~~
7 ~~United States Government, or any person applying for em~~
8 ~~ployment in the executive branch of the United States Gov~~
9 ~~ernment, or any civilian employee of the United States~~
10 ~~serving in any department or agency of the United States~~
11 ~~Government, to submit to any interrogation or examination~~
12 ~~or to take any psychological test which is designed to elicit~~
13 ~~from him information concerning his personal relationship~~
14 ~~with any person connected with him by blood or marriage,~~
15 ~~or concerning his religious beliefs or practices, or concerning~~
16 ~~his attitude or conduct with respect to sexual matters: Pro~~
17 ~~vided, however, that nothing contained in this subsection~~
18 ~~shall be construed to prevent a physician from eliciting such~~
19 ~~information or authorizing such tests in the diagnosis or~~
20 ~~treatment of any civilian employee or applicant where such~~
21 ~~physician deems such information necessary to enable him~~
22 ~~to determine whether or not such individual is suffering~~
23 ~~from mental illness: Provided further, however, that this~~
24 ~~determination shall be made in individual cases and not pur~~
25 ~~suant to general practice or regulation governing the exami~~

1 nation of employees or applicants according to grade, agency,
2 or duties: *Provided, further, however, That nothing contained*
3 in this subsection shall be construed to prohibit an officer of
4 the Civil Service Commission from advising any civilian
5 employee or applicant on a specific charge of sexual miscon-
6 duct made against that person, and affording him an oppor-
7 tunity to refute the charge.

8 (e) To require or request, or to attempt to require
9 or request, any person seeking to establish civil service
10 status or eligibility for employment in the executive branch
11 of the United States Government, or any person applying
12 for employment in the executive branch of the United States
13 Government, or any civilian employee of the United States
14 serving in any department or agency of the United States
15 Government, to take any polygraph test designed to elicit
16 from him information concerning his personal relationship
17 with any person connected with him by blood or marriage,
18 or concerning his religious beliefs or practices, or concerning
19 his attitude or conduct with respect to sexual matters.

20 SEC. 3. It shall be unlawful for any commissioned officer,
21 as defined in section 101 of title 10, United States Code, or
22 any member of the Armed Forces acting or purporting to
23 act under his authority, to require or request, or to attempt
24 to require or request, any civilian employee of the executive
25 branch of the United States Government under his authority

1 or subject to his supervision to perform any of the acts or
2 submit to any of the requirements made unlawful by section
3 1 of this Act.

4 SEC. 4. Whenever any officer of any executive depart-
5 ment or any executive agency of the United States Gov-
6 ernment, or any person acting or purporting to act under his
7 authority, or any commissioned officer as defined in section
8 101 of title 10, United States Code, or any member of the
9 Armed Forces acting or purporting to act under his author-
10 ity, violates or threatens to violate any of the provisions of
11 section 1, 2, or 3 of this Act, any civilian employee of the
12 United States serving in any department or agency of the
13 United States Government, or any person applying for
14 employment in the executive branch of the United States
15 Government, or any person seeking to establish civil service
16 status or eligibility for employment in the executive branch
17 of the United States Government, affected or aggrieved by
18 the violation or threatened violation, may bring a civil action
19 in his own behalf or in behalf of himself and others
20 similarly situated, against the offending officer or person in
21 the United States district court for the district in which the
22 violation occurs or is threatened, or the district in which the
23 offending officer or person is found, or in the United States
24 District Court for the District of Columbia, to prevent
25 the threatened violation or to obtain redress against the

1 consequences of the violation. The Attorney General shall
2 defend all officers or persons sued under this section
3 who acted pursuant to an order, regulation, or directive,
4 or who, in his opinion, did not willfully violate the
5 provisions of this Act. Such United States district court
6 shall have jurisdiction to try and determine such civil action
7 irrespective of the actuality or amount of pecuniary injury
8 done or threatened, and without regard to whether the
9 aggrieved party shall have exhausted any administrative
10 remedies that may be provided by law, and to issue such
11 restraining order, interlocutory injunction, permanent injunc-
12 tion, or mandatory injunction, or enter such other judgment
13 or decree as may be necessary or appropriate to prevent
14 the threatened violation, or to afford the plaintiff and others
15 similarly situated complete relief against the consequences of
16 the violation. With the written consent of any person
17 affected or aggrieved by a violation or threatened violation
18 of section 1, 2, or 3 of this Act, any employee organization
19 may bring such action on behalf of such person, or may
20 intervene in such action. For the purposes of this section,
21 employee organizations shall be construed to include any
22 brotherhood, council, federation, organization, union, or pro-
23 fessional association made up in whole or in part of civilian
24 employees of the United States and which has as one of its
25 purposes dealing with departments, agencies, commissions,

1 and independent agencies of the United States concerning
2 the condition and terms of employment of such employees.

3 SEC. 5. (a) There is hereby established a Board on
4 Employees' Rights (hereinafter referred to as the "Board").

5 The Board shall be composed of three members, appointed
6 by the President, by and with the advice and consent of the
7 Senate. The President shall designate one member as chair-
8 man. No more than two members of the Board may be of
9 the same political party. No member of the Board shall be
10 an officer or employee of the United States Government.

11 (b) The term of office of each member of the Board
12 shall be five years, except that (1) of those members first
13 appointed, one shall serve for five years, one for three years,
14 and one for one year, respectively, from the date of enact-
15 ment of this Act, and (2) any member appointed to fill
16 a vacancy occurring prior to the expiration of the term for
17 which his predecessor was appointed shall be appointed for
18 the remainder of such term.

19 (c) Members of the Board shall be compensated at the
20 rate of \$75 a day for each day spent in the work of the
21 Board, and shall be paid actual travel expenses and per-
22 diem in lieu of subsistence expenses when away from their
23 usual places of residence, as authorized by section 5703 of
24 title 5, United States Code.

1 (d) Two members shall constitute a quorum for the
2 transaction of business.

3 (e) The Board may appoint and fix the compensation
4 of such officers, attorneys, and employees, and make such
5 expenditures, as may be necessary to carry out its functions.

6 (f) The Board shall make such rules and regulations
7 as shall be necessary and proper to carry out its functions.

8 (g) The Board shall have the authority and duty to
9 receive and investigate written complaints from or on be-
10 half of any person claiming to be affected or aggrieved by
11 any violation or threatened violation of this Act and to con-
12 duct a hearing on each such complaint. Within ten days
13 after the receipt of any such complaint, the Board shall
14 furnish notice of the time, place, and nature of the hearing
15 thereon to all interested parties. The Board shall render
16 its final decision with respect to any complaint within thirty
17 days after the conclusion of its hearing thereon.

18 (h) Officers or representatives of any Federal employee
19 organization in any degree concerned with employment of
20 the category in which any alleged violation of this Act
21 occurred or is threatened shall be given an opportunity to
22 participate in each hearing conducted under this section,
23 through submission of written data, views, or arguments,
24 and in the discretion of the Board, with opportunity for oral
25 presentation. Government employees called upon by any

1 party or by any Federal employee organization to participate
2 in any phase of any administrative or judicial proceeding
3 under this section shall be free to do so without incurring
4 travel cost or suffering loss in leave or pay; and all such em-
5 ployees shall be free from restraint, coercion, interference,
6 intimidation, or reprisal in or because of their participation.
7 Any periods of time spent by Government employees during
8 such participation shall be held and considered to be Federal
9 employment for all purposes.

10 (i) Insofar as consistent with the purposes of this sec-
11 tion, the provisions of subchapter II of chapter 5 of title 5,
12 United States Code, relating to the furnishing of notice and
13 manner of conducting agency hearings, shall be applicable
14 to hearings conducted by the Board under this section.

15 (j) If the Board shall determine after hearing that a
16 violation of this Act has not occurred or is not threatened,
17 the Board shall state its determination and notify all inter-
18 ested parties of such determination. Each such determina-
19 tion shall constitute a final decision of the Board for pur-
20 poses of judicial review.

21 (k) If the Board shall determine that any violation
22 of this Act has been committed or threatened by any civil-
23 ian officer or employee of the United States, the Board shall
24 immediately (1) issue and cause to be served on such of-
25 ficer or employee an order requiring such officer or employee

1 to cease and desist from the unlawful act or practice which
2 constitutes a violation, (2) endeavor to eliminate any such
3 unlawful act or practice by informal methods of conference,
4 conciliation, and persuasion, and (3) may
5 (A) (i) in the case of the first offense by any
6 civilian officer or employee of the United States, other
7 than any officer appointed by the President, by and with
8 the advice and consent of the Senate, issue an official
9 reprimand against such officer or employee or order the
10 suspension without pay of such officer or employee from
11 the position or office held by him for a period of not to
12 exceed fifteen days, and (ii) in the case of a second
13 or subsequent offense by any such officer or employee,
14 order the suspension without pay of such officer or em-
15 ployee from the position or office held by him for a
16 period of not to exceed thirty days or order the removal
17 of such officer or employee from such position or office;
18 and
19 (B) in the case of any offense by any officer ap-
20 pointed by the President, by and with the advice and
21 consent of the Senate, transmit a report concerning such
22 violation to the President and the Congress.
23 (1) If the Board shall determine that any violation
24 of this Act has been committed or threatened by any officer
25 of any of the Armed Forces of the United States, or any

1 person purporting to act under authority conferred by such
2 officer, the Board shall (1) submit a report thereon to the
3 President, the Congress, and the Secretary of the military
4 department concerned, (2) endeavor to eliminate any un-
5 lawful act or practice which constitutes such a violation by
6 informal methods of conference, conciliation, and persuasion,
7 and (3) refer its determination and the record in the case
8 to any person authorized to convene general courts-martial
9 under section 822 (article 22) of title 10, United States
10 Code. Thereupon such person shall take immediate steps
11 to dispose of the matter under chapter 47 of title 10, United
12 States Code (Uniform Code of Military Justice).
13 (m) Any party aggrieved by any final determination
14 or order of the Board may institute, in the district court of
15 the United States for the judicial district wherein the viola-
16 tion or threatened violation of this Act occurred, or in the
17 United States District Court for the District of Columbia,
18 a civil action for the review of such determination or order.
19 In any such action, the court shall have jurisdiction to (1)
20 affirm, modify, or set aside any determination or order made
21 by the Board which is under review, or (2) require the
22 Board to make any determination or order which it is author-
23 ized to make under subsection (k), but which it has refused
24 to make. The reviewing court shall set aside any finding,
25 conclusion, determination, or order of the Board as to which

1 complaint is made which is unsupported by substantial evi-
2 dence on the record considered as a whole.

3 (n) The Board shall submit, not later than March 31
4 of each year, to the Senate and House of Representatives,
5 respectively, a report on its activities under this section dur-
6 ing the immediately preceding calendar year, including a
7 statement concerning the nature of all complaints filed with
8 it, its determinations and orders resulting from hearings
9 thereon, and the names of all officers or employees of the
10 United States with respect to whom any penalties have been
11 imposed under this section.

12 (o) There are authorized to be appropriated sums nee-
13 ssary, not in excess of \$100,000, to carry out the provisions
14 of this section.

15 SEC. 6. Nothing contained in this Act shall be construed
16 to prohibit an officer of the Central Intelligence Agency or
17 of the National Security Agency from requesting any civilian
18 employee or applicant to take a polygraph test, or to take a
19 psychological test, designed to elicit from him information
20 concerning his personal relationship with any person con-
21 nected with him by blood or marriage, or concerning his
22 religious beliefs or practices, or concerning his attitude or
23 conduct with respect to sexual matters, or to provide a per-
24 sonal financial statement, if the Director of the Central
25 Intelligence Agency or his designee or the Director of the
26 National Security Agency or his designee makes a personal

1 finding with regard to each individual to be so tested or
2 examined that such test or information is required to protect
3 the national security.

4 SEC. 7. No civilian employee of the United States serving
5 in the Central Intelligence Agency or the National Security
6 Agency, and no individual or organization acting in behalf
7 of such employee, shall be permitted to invoke the provisions
8 of sections 4 and 5 without first submitting a written com-
9 plaint to the agency concerned about the threatened or actual
10 violation of this Act and affording such agency one hundred
11 and twenty days from the date of such complaint to prevent
12 the threatened violation or to redress the actual violation:
13 Provided, however, That nothing in this Act shall be con-
14 strued to affect any existing authority of the Director of Cen-
15 tral Intelligence under section 403 (c), of title 50, United
16 States Code, and any authorities available to the National
17 Security Agency under section 833 of title 50, United States
18 Code, to terminate the employment of any employee.

19 SEC. 8. Nothing in this Act shall be construed to affect
20 in any way the authority of the Directors of the Central
21 Intelligence Agency or the National Security Agency to pro-
22 tect or withhold information pursuant to statute or executive
23 order. The personal certification by the Director of the

1 ~~agency that disclosure of any information is inconsistent with~~
2 ~~the provision of any statute or Executive order shall be con-~~
3 ~~clusive and no such information shall be admissible in evi-~~
4 ~~dence in any interrogation under section 1 (k) or in any~~
5 ~~civil action under section 4 or in any proceeding or civil~~
6 ~~action under section 5.~~

7 ~~Sec. 9. This Act shall not be applicable to the Federal~~
8 ~~Bureau of Investigation.~~

9 ~~Sec. 10. Nothing contained in sections 4 and 5 shall~~
10 ~~be construed to prevent establishment of department and~~
11 ~~agency grievance procedures to enforce this Act, but the~~
12 ~~existence of such procedures shall not preclude any applicant~~
13 ~~or employee from pursuing the remedies established by this~~
14 ~~Act or any other remedies provided by law: *Provided*,~~
15 ~~however, That if under the procedures established, the em-~~
16 ~~ployee or applicant has obtained complete protection against~~
17 ~~threatened violations or complete redress for violations, such~~
18 ~~action may be pleaded in bar in the United States district~~
19 ~~court or in proceedings before the Board on Employee~~
20 ~~Rights: And provided further, That if an employee elects~~
21 ~~to seek a remedy under either section 4 or section 5, he~~
22 ~~waives his right to proceed by an independent action under~~
23 ~~the remaining section.~~

1 SEC. 11. If any provision of this Act or the application
2 of any provision to any person or circumstances shall be held
3 invalid, the remainder of this Act or the application of such
4 provision to persons or circumstances other than those as to
5 which it is held invalid, shall not be affected.

6 That (a) chapter 71 of title 5, *United States Code*, is
7 amended by adding at the end thereof the following new
8 subchapter III:

9 “**SUBCHAPTER III—EMPLOYEE RIGHTS**

10 “**§ 7171. Policy**

11 “It is the policy of the United States, as an employer,
12 to assure that those officials of Executive agencies charged
13 with administrative or supervisory responsibility recognize
14 and protect the personal and individual rights, entitlements,
15 and benefits of employees of, and applicants for employment
16 in, Executive agencies.

17 “**§ 7172. Definitions**

18 “For purposes of this subchapter—

19 “(1) the term ‘Commission’ means the United States
20 Civil Service Commission; and

21 “(2) the term ‘official of an Executive agency’
22 means—

23 “(A) an officer of an Executive agency;

24 “(B) a commissioned or warrant officer of the
25 uniformed services; and

1 “(C) an individual acting or purporting to
2 act under the authority of an officer referred to in
3 subparagraph (A) or (B) of this section.

4 “§ 7173. Employee rights

5 “(a) An official of an Executive agency may not—
6 “(1) require or request, or attempt to require or
7 request, an employee of, or an applicant for employment
8 in, an Executive agency to disclose his race, religion, or
9 national origin, or the race, religion, or national origin
10 of any of his forebears. This paragraph does not prohibit
11 inquiry concerning—

12 “(A) the citizenship of an employee or applicant;

14 “(B) the national origin of an employee or
15 applicant when the inquiry is considered necessary
16 or advisable to determine suitability for assignment
17 to activities or undertakings related to the national
18 security of the United States, to law enforcement,
19 or to activities or undertakings of any nature outside
20 the United States;

21 “(C) the race, religion or national origin of an
22 employee or applicant when that matter is in issue
23 in an allegation or complaint of discrimination;

24 “(D) the race, religion, or national origin of an
25 employee or applicant when (i) that matter is di-

1 *rectly related to, or an integral part of, scientific re-*
2 *search or program evaluation, (ii) appropriate safe-*
3 *guards have been instituted to preserve both the*
4 *voluntary participation and the anonymity of the*
5 *employee or applicant, and (iii) the inquiry has*
6 *been approved by the Civil Service Commission; or*

7 *"(E) the race of an employee or applicant*
8 *when made to satisfy the requirements of law pro-*
9 *viding preference for Indians in connection with*
10 *functions or services affecting Indians;*

11 *"(2) coerce, require, or request, or attempt to*
12 *coerce, require, or request, an employee of an Executive*
13 *agency to attend or participate in a formal or informal*
14 *meeting, assemblage, or other group activity held to*
15 *present, advocate, develop, explain, or otherwise cover*
16 *in any way, by lecture, discussion, discourse, instruction,*
17 *visual presentation, or otherwise, any matter or subject*
18 *other than—*

19 *"(A) the performance of official duties to*
20 *which the employee is or may be assigned in the*
21 *Executive agency; or*

22 *"(B) the development of skills, knowledge, or*
23 *abilities that qualify him for the performance of*
24 *those official duties;*

25 *"(3) coerce, require, or request, or attempt to*

1 *coerce, require, or request, an employee of an Executive*
2 *agency to—*

3 *"(A) participate in any way in an activity or*
4 *undertaking unless it is related to the performance*
5 *of official duties to which the employee is or may*
6 *be assigned in the Executive agency or related to*
7 *the development of skills, knowledge, or abilities*
8 *that qualify him for the performance of those official*
9 *duties; or*

10 *"(B) make a report concerning any activity*
11 *or undertaking of the employee not involving his*
12 *official duties, except—*

13 *"(i) when there is reason to believe that*
14 *the activity or undertaking conflicts with, or*
15 *adversely affects the performance of, his official*
16 *duties; or*

17 *"(ii) as authorized to the contrary under*
18 *paragraph (6) of this subsection.*

19 *This paragraph does not prohibit the use of appropriate*
20 *publicity to inform employees of requests for assistance*
21 *from public service programs or organizations;*

22 *"(4) require or request, or attempt to require or*
23 *request, an employee of, or an applicant for employ-*
24 *ment in, an Executive agency to submit to an interro-*
25 *gation or examination or to take a polygraph or psycho-*

1 *logical test designed to elicit from the employee or*
2 *applicant information concerning his personal relation-*
3 *ship with any individual related to him by blood or mar-*
4 *riage, his religious beliefs or practices, or his attitude or*
5 *conduct with respect to sexual matters. This paragraph*
6 *does not prohibit—*

7 *"(A) a physician from eliciting this informa-*
8 *tion or authorizing these tests in the diagnosis or*
9 *treatment of an employee or applicant in individual*
10 *cases and not pursuant to general practice or regu-*
11 *lation governing the examination of employees or*
12 *applicants, when the physician considers the infor-*
13 *mation necessary to enable him to determine*
14 *whether or not the employee or applicant is suffer-*
15 *ing from mental illness;*

16 *"(B) an official of an Executive agency from*
17 *advising an employee or applicant of a specific*
18 *charge of sexual misconduct made against the em-*
19 *ployee or applicant and giving him a full oppor-*
20 *tunity to refute the charge; or*

21 *"(C) an official of an Executive agency from*
22 *eliciting from an employee or applicant, in individ-*
23 *ual cases and not pursuant to general practice or*
24 *regulation, information concerning the personal re-*
25 *lationship of the employee or applicant with any*

1 *individual related to him by blood or marriage, when*
2 *the official considers the information necessary in*
3 *the interest of national security;*

4 “(5) coerce or require, or attempt to coerce or
5 require, an employee of an Executive agency to invest
6 his earnings in bonds or other obligations or securities
7 issued by the United States or by an Executive agency,
8 or to make donations to an institution or cause of any
9 kind. This paragraph does not prohibit an official of an
10 Executive agency from calling meetings and taking
11 action appropriate to inform an employee of the op-
12 portunity—

13 “(A) voluntarily to invest his earnings in
14 bonds or other obligations or securities issued by the
15 United States or by an Executive agency; or

16 “(B) voluntarily to make donations to an insti-
17 tution or cause;

18 “(6) require or request, or attempt to require or
19 request, an employee of an Executive agency (other than
20 a Presidential appointee) to disclose his property or the
21 property of any member of his family or household un-
22 less otherwise required by law. This paragraph does not
23 prohibit—

24 “(A) the Department of the Treasury or other
25 Executive agency from requiring an employee to

1 *make such reports as may be necessary or appropriate*
2 *for the determination of his liability for taxes,*
3 *tariffs, customs duties, or similar obligations to the*
4 *United States; or*

5 *“(B) an official of an Executive agency from*
6 *requiring an employee who participates (other than*
7 *in a clerical capacity) in a determination with re-*
8 *spect to—*

9 *“(i) a Government contract or grant;*

10 *“(ii) the regulation of non-Federal enter-*
11 *prise;*

12 *“(iii) the tax or other liability of any per-*
13 *son to the United States; or*

14 *“(iv) a claim that requires expenditure of*
15 *money of the United States;*

16 *from disclosing specific items of the property of*
17 *that employee, or specific items of the property of*
18 *any member of his family or household, that may*
19 *tend to indicate a conflict of interest with respect*
20 *to the performance of any of the official duties*
21 *to which the employee is or may be assigned.*

22 *As used in this paragraph, ‘property’ includes items*
23 *of property, income, and other assets, and the source*
24 *thereof, liabilities, and personal and domestic expendi-*
25 *tures;*

1 “(7) prohibit or restrict, or attempt to prohibit
2 or restrict, the exercise by an employee of an Executive
3 agency of the right of reasonable communication with
4 any official of his agency; or

5 “(8) remove, suspend, or furlough from duty without
6 pay, demote, reduce in rank, seniority, status, pay,
7 or performance or efficiency rating, deny promotion to,
8 relocate, reassign, discipline, or discriminate in regard
9 to any employment right, entitlement, benefit, or term
10 or condition of employment of, an employee of an
11 Executive agency, or threaten to commit any of these
12 acts, by reason of—

13 “(A) the refusal or failure of the employee
14 to submit to or comply with any requirement, re-
15 quest, or action prohibited by this subsection; or

16 “(B) the exercise by the employee of any
17 right, entitlement, benefit, or other protection
18 granted or secured by this section and section 7175
19 of this title.

20 “(b) Subsection (a) of this section does not apply to—

21 “(1) the Central Intelligence Agency;

22 “(2) the National Security Agency;

23 “(3) the Federal Bureau of Investigation; or

24 “(4) such other Executive agency, or part thereof,

1 *as the President, in the interest of national security,*
2 *may recommend to the Congress.*

3 *The exemption recommended by the President and trans-*
4 *mitted to Congress under paragraph (4) of this subsection*
5 *becomes effective at the end of the first period of 30 calendar*
6 *days of continuous session of Congress after the date on*
7 *which the recommendation is transmitted unless, between*
8 *the date of transmittal and the end of the 30-day period,*
9 *either the committee of the House of Representatives or the*
10 *committee of the Senate to which the recommendation has*
11 *been referred adopts a resolution specifically disapproving*
12 *the exemption so recommended and transmitted. The con-*
13 *tinuity of a session is broken only by an adjournment of*
14 *the Congress sine die. The days on which either House is*
15 *not in session because of an adjournment of more than 3 days*
16 *to a day certain are excluded in the computation of the*
17 *30-day period.*

18 “(c) (1) *An employee of, or an applicant for employ-*
19 *ment in, an Executive agency who claims to be aggrieved by*
20 *a violation or threatened violation of subsection (a) of this*
21 *section is entitled to file a grievance with the agency con-*
22 *cerned not later than 15 days after the date of the violation*
23 *or threatened violation.*

24 “(2) *If—*

1 “(A) the decision on the grievance by the Executive
2 agency is adverse to the employee or applicant; or
3 “(B) after 60 days from the date the grievance is
4 filed the Executive agency has not issued a decision on
5 the grievance;
6 the employee or applicant is entitled to file a complaint with
7 the Commission not later than 15 days after the adverse
8 decision or the expiration of the 60-day period, as the case
9 may be.

10 “§ 7174. Appeal procedure

11 “(a)(1) The Commission shall receive and investigate
12 written complaints, filed under section 7173(c)(2) of this
13 title, from or on behalf of an employee or applicant claiming
14 to be aggrieved by a violation or threatened violation of section
15 7173(a) of this title. On receipt of such a complaint,
16 the Commission immediately shall transmit a copy thereof
17 to the head of the Executive agency concerned.

18 “(2) If the Commission determines, within 10 days
19 after its receipt of the complaint, that the facts alleged in the
20 complaint do not constitute a violation or threatened violation
21 of section 7173(a) of this title with respect to the employee
22 or applicant, it may dismiss the complaint without a hearing.
23 If the Commission dismisses the complaint, it shall notify
24 all interested parties of the dismissal.

1 “(3) (A) If the Commission does not dismiss the com-
2 plaint within 10 days after its receipt thereof, it shall—

3 “(i) conduct a hearing on the complaint within 30
4 days after its receipt of the complaint;

5 “(ii) furnish notice of the time, place, and nature
6 of the hearing thereon to all interested parties; and

7 “(iii) make a final determination within 90 days
8 after its receipt of the complaint.

9 “(B) When a hearing on the complaint is to be con-
10 ducted—

11 “(i) the Executive agency concerned shall file an
12 answer to the complaint and participate as a party in
13 the hearing; and

14 “(ii) any official of that agency, who is alleged, in
15 the complaint or during the course of the hearing, to have
16 committed a violation or threatened violation of section
17 7173(a) of this title, is entitled, in his individual capac-
18 ity, to file an answer to the allegation and participate as
19 a party in the hearing.

20 “(b) With the written consent of the employee or ap-
21 plicant concerned, filed with the Commission, an officer or
22 representative of not more than one labor organization, or
23 association of supervisors, representing employees shall be
24 given an opportunity to participate in each hearing conducted

1 *under this section, through submission of written data, views,*
2 *or arguments, and, in the discretion of the Commission, an*
3 *opportunity for oral presentation.*

4 *"(c) If, after hearing, the Commission determines that*
5 *a violation of section 7173(a) of this title has not occurred*
6 *or is not threatened, the Commission shall state its determina-*
7 *tion and notify all interested parties of the determination.*
8 *Each such determination, including a dismissal by the*
9 *Commission of the complaint without a hearing, constitutes*
10 *a final decision of the Commission for purposes of judicial*
11 *review.*

12 *"(d)(1) If, after hearing, the Commission determines*
13 *that a violation of section 7173(a) of this title has been*
14 *committed or threatened by an official of an Executive*
15 *agency not subject to chapter 47 of title 10, the Commission*
16 *shall—*

17 *"(A) require the head of the Executive agency con-*
18 *cerned to issue and cause to be served on the official an*
19 *order requiring him to cease and desist from the unlaw-*
20 *ful act or practice that constitutes a violation; and*

21 *"(B) endeavor to eliminate the unlawful act or*
22 *practice by informal methods of conference, conciliation,*
23 *and persuasion.*

24 *"(2) If, after hearing, the Commission determines that*
25 *a violation of section 7173(a) of this title has been committed*

1 *or threatened by an official of an Executive agency not sub-*
2 *ject to chapter 47 of title 10, the Commission may, without*
3 *regard to chapter 75 of this title, require the head of the*
4 *Executive agency concerned to—*

5 *“(A) (i) in the case of the first offense by such an*
6 *official, other than an official appointed by the Presi-*
7 *dent, by and with the advice and consent of the Senate,*
8 *issue an official reprimand against the official or order*
9 *the suspension without pay of the official from the posi-*
10 *tion or office held by him for a period of not to exceed*
11 *15 days; and*

12 *“(ii) in the case of a second or subsequent offense*
13 *by the official, order the suspension without pay of the*
14 *official from the position or office held by him for a period*
15 *of not less than 15 nor more than 60 days or, when the*
16 *Commission considers the second or subsequent offense to*
17 *be sufficiently serious to warrant the action, order the*
18 *removal of the official from the position or office; and*

19 *“(B) in the case of an offense by such an official*
20 *appointed by the President, by and with the advice and*
21 *consent of the Senate, transmit a report concerning the*
22 *violation to the President and Congress.*

23 *“(3) A reprimand or order under paragraph (2)(A)*
24 *of this subsection does not become effective until the expi-*
25 *ration of the period within which the official aggrieved by*

1 *the reprimand or order may file a petition for review or,*
2 *if such a petition is filed, until the court makes a final disposi-*
3 *tion of the case.*

4 “(e)(1) *If, after hearing, the Commission determines*
5 *that a violation of section 7173(a) of this title has been*
6 *committed or threatened by an official of an Executive agency*
7 *subject to chapter 47 of title 10, the Commission shall—*

8 “(A) *submit a report thereon to the Secretary con-*
9

10 “(B) *endeavor to eliminate the unlawful act or*
11 *practice that constitutes a violation by informal methods*
12 *of conference, conciliation, and persuasion; and*

13 “(C) *refer its determination and the record in*
14 *the case to such Secretary concerned who shall take*
15 *steps to dispose of the matter under chapter 47 of title*
16 *10.*

17 “(2) *The action referred to in paragraph (1)(C) of*
18 *this subsection may not be taken by such Secretary concerned*
19 *until the expiration of the period within which the official*
20 *aggrieved by the reference to such Secretary by the Com-*
21 *mission under that paragraph may file a petition for review*
22 *or, if such a petition is filed, until the court makes a final dis-*
23 *position of the case.*

24 “(f)(1) *The Commission shall submit, not later than*
25 *March 31 of each year, to the President for transmittal to*

1 *Congress a report on its activities under this subchapter dur-*
2 *ing the immediately preceding calendar year, including—*

3 *“(A) the types and kinds of complaints filed with*
4 *the Commission;*

5 *“(B) the determinations, orders, and actions of*
6 *the Commission with respect to the complaints;*

7 *“(C) the name of each official of an Executive*
8 *agency with respect to whom an action was taken or*
9 *penalty imposed under subsection (d) of this section;*

10 *“(D) the nature of that action or penalty; and*

11 *“(E) such other matters as the Commission con-*
12 *siders relevant and appropriate to provide full and com-*
13 *plete information with respect to the operation and ad-*
14 *ministration of this subchapter.*

15 *“(2) The Secretary concerned shall submit, not later*
16 *than March 31 of each year, to the President for transmittal*
17 *to Congress a report on his activities under this subchapter*
18 *during the immediately preceding calendar year, including—*

19 *“(A) the disposition, under chapter 47 of title 10,*
20 *of matters referred to the Secretary concerned under*
21 *subsection (e)(1)(C) of this section;*

22 *“(B) the name of each official of an Executive*
23 *agency with respect to whom an action was taken or*
24 *penalty imposed under that chapter;*

25 *“(C) the nature of that action or penalty; and*

1 “(D) such other matters as the Secretary concerned
2 considers relevant and appropriate to provide full and
3 complete information with respect to his activities under
4 this subchapter.

5 “§ 7175. Judicial review

6 “(a) (1) An employee, or applicant for employment, ag-
7 grieved by a final determination or order of the Commission
8 may file a petition to review the determination or order, with-
9 in 30 days after the date of the determination or order, in the
10 district court of the United States for the judicial district in
11 which the alleged violation or threatened violation of section
12 7173(a) of this title occurred or in which his official duty
13 station was located at the time of the alleged violation or
14 threatened violation.

15 (2) An official, or former official, of an Executive
16 agency who, in connection with the petition to review—

17 “(A) is involved in an alleged violation or threat-
18 ened violation of section 7173(a) of this title; or

19 “(B) is aggrieved by a final determination or order
20 of the Commission, or part or application thereof, in
21 connection with the alleged violation or threatened vio-
22 lation;

23 is entitled, in his individual capacity, to file an answer with
24 respect to the violation or threatened violation and participate
25 as a party in the proceedings.

1 "(b) If, after the expiration of 30 days after the date
2 of a final determination or order of the Commission, a petition
3 with respect to the determination or order has not been filed
4 under subsection (a) of this section, an official or former
5 official of an Executive agency aggrieved by the determina-
6 tion or order, or part or application thereof, may file, with-
7 in 30 days after the expiration of the 30-day period, in the
8 district court of the United States for the judicial district in
9 which the alleged violation or threatened violation of section
10 7173(a) of this title occurred or in which his official duty
11 station was located at the time of the alleged violation or
12 threatened violation, a petition to review the determination or
13 order, or part or application thereof.

14 "(c) A petition to review filed under subsection (a) or
15 (b) of this section shall name as defendant both the Executive
16 agency concerned and the Commission, and a copy thereof
17 shall be served on the Executive agency concerned and the
18 Commission.

19 "(d) When a copy of a petition to review is served on
20 the Commission, a certified copy of the record on which the
21 final determination or order of the Commission is based shall
22 be filed with the court. On filing of a petition with the court,
23 and in its consideration of the petition, the court shall have
24 jurisdiction to—

25 "(1) issue such restraining order, interlocutory

1 *injunction, permanent injunction or mandatory injunc-*
2 *tion, as may be necessary and appropriate with respect*
3 *to any determination or order, or part or application*
4 *thereof, made by the Commission that is under review;*

5 *"(2) affirm, modify, or set aside any such deter-*
6 *mination or order, or part or application thereof; and*

7 *"(3) remand the matter to the Commission for ap-*
8 *propriate action by the Commission and the Executive*
9 *agency concerned in accordance with the decision of the*
10 *court.*

11 *The reviewing court shall set aside any finding, conclusion,*
12 *determination, or order of the Commission as to which a peti-*
13 *tion is filed that is unsupported by substantial evidence*
14 *on the record considered as a whole.*

15 *"(e) With the written consent, filed with the court, of*
16 *an employee, applicant for employment, official of, or former*
17 *official of, an Executive agency, aggrieved by a final deter-*
18 *mination or order of the Commission, who is entitled to file a*
19 *petition to review or an answer, or to participate as a party*
20 *in any proceeding, under this section, not more than one labor*
21 *organization, or association of supervisors, representing em-*
22 *ployees may intervene in connection with the review.*

23 ***“§ 7176. General provisions***

24 *"(a) An individual called on to participate in any phase*
25 *of an administrative or judicial proceeding under this sub-*

1 *chapter shall be free from restraint, coercion, interference,*
2 *intimidation, or reprisal in the course of, or because of, his*
3 *participation.*

4 *"(b) An employee or an official of an Executive agency*
5 *who is a party to the action, summoned to appear, or assigned*
6 *by his agency to appear, including an appearance to give his*
7 *deposition, before the Commission, or before the appropriate*
8 *court, in connection with any matter before the Commission*
9 *or the court under this subchapter, shall not incur a loss of,*
10 *or reduction in, any right, entitlement, or benefit as an em-*
11 *ployee or official of that agency. A period of such absence*
12 *within his regularly scheduled tour of duty is service per-*
13 *formed by the employee or official while on official business.*
14 *Travel by the employee or official during a period of such an*
15 *absence, whether or not performed within his regularly*
16 *scheduled tour of duty, is travel on official business.*

17 *"(c) On written application certifying his expenses and*
18 *charges filed with the Commission by an attorney represent-*
19 *ing a party to the action who has appeared before the Com-*
20 *mission, or the appropriate court, in connection with any*
21 *matter before the Commission, or the court, or both, under*
22 *this subchapter, that has been determined by the Commission*
23 *or the court, in favor of the party represented by the at-*

1 *torney, the Commission may allow, at the conclusion of the*
2 *representation, such remuneration to the attorney as it con-*
3 *siders reasonable and proper and shall certify to the Execu-*
4 *tive agency concerned the amount of the attorney's remunera-*
5 *tion granted by it. The agency shall pay the certified amount*
6 *of the remuneration, in accordance with the following pro-*
7 *visions:*

8 “(1) *The agency shall charge against such certified*
9 *amount of remuneration all sums previously paid to the*
10 *attorney by the party represented.*

11 “(2) *If the sums previously paid to the attorney by*
12 *that party for such representation equal or exceed the*
13 *certified amount of the attorney's remuneration, the*
14 *agency shall reimburse that party in that certified amount.*

15 “(3) *If the sums previously paid to the attorney*
16 *by that party for such representation are less than that*
17 *certified amount, the agency shall reimburse that party*
18 *in the amount paid by that party and shall pay to the*
19 *attorney an amount equal to the difference between the*
20 *certified amount of the attorney's remuneration and the*
21 *aggregate of the sums previously paid by that party to*
22 *the attorney.”.*

1 (b) *The analysis of chapter 71 of title 5, United States*
2 *Code, is amended by adding the following at the end thereof:*

“SUBCHAPTER III—EMPLOYEE RIGHTS

“Sec.

“7171. Policy.

“7172. Definitions.

“7173. Employee rights.

“7174. Appeal procedure.

“7175. Judicial review.

“7176. General provisions.”.

3 *SEC. 2. Subchapter III of chapter 71 of title 5, United*
4 *States Code, as added by this Act, shall apply only with*
5 *respect to acts, violations, threatened violations, grievances,*
6 *and other similar matters covered by such subchapter which*
7 *arise or occur on or after the date of enactment of this Act.*

Amended the title so as to read: “An Act to amend title 5, United States Code, to protect certain civilian employees of the United States Government in the enjoyment of their constitutional rights, to prevent unwarranted governmental invasions of their privacy, and for other purposes.”

Passed the Senate March 7, 1974.

Attest:

FRANCIS R. VALEO,

Secretary.

[COMMITTEE PRINT]

SEPTEMBER 19, 1974

Union Calendar No.

86th CONGRESS
2d SESSION

S. 1688

[Report No. 93-]

AN ACT

To protect the civilian employees of the executive branch of the United States Government in the enjoyment of their constitutional rights and to prevent unwarranted governmental invasions of their privacy.

MARCH 11, 1974

Referred to the Committee on Post Office and Civil Service

SEPTEMBER , 1974

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed